IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No 825 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ABDULBHAI MERUBHAI SAMA

Versus

SUB DIVISIONAL MAGISTRATE

Appearance:

1. Special Criminal Application No. 825 of 2001

MR PJ YAGNIK for Petitioner No. 1

MR D.P. JOSHI, APP for Respondent State

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 15/01/2002

ORAL JUDGEMENT

The petitioner by this petition under Article 226 of the Constitution of India seeks to challenge an order passed by Sub Divisional Magistrate, Viramgam, Division Ahmedabad dated 18.6.2001, passed in exercise of powers

under Section 56A and C of the Bombay Police Act, externing the petitioner for a period of one year from the territories of Ahmedabad Rural, Ahmedabad City, Surendranagar, Mehsana and Gandhinagar Districts on the grounds stated in the petition.

2. Brief facts of the case can be stated thus:

2.1 The petitioner was issued with a notice under Section 59 of the Bombay Police Act, on 13.3.2001, calling upon him to show cause as to why he should not be externed from the areas of Ahmedabad City, Ahmedabad Rural, Surendranagar, Gandhinagar and Kheda Districts for the reasons stated therein.

2.2 The petitioner gave a reply to the said notice stating that he is not involved in the activities alleged; that he has not been convicted and that cases are pending before the Court.

2.3 Considering the reply, the externing authority passed the impugned order on 18.6.2001. The said order was carried in appeal before the Government and the Government, by order dated 24th August, 2001, confirmed the externment order impugned herein. The petitioner is therefore before this Court challenging the order of externment.

3. The only ground that is canvassed by the Learned Advocate Mr. Yagnik appearing for the petitioner for assailing the order is that the authority has not considered any material and in fact there was no material to indicate that the petitioner is likely to continue his activities from contiguous districts from which he is externed. He therefore submitted that the satisfaction for externing the petitioner from contiguous districts is without any basis. Therefore, the petition may be allowed. He has relied on the decision of this Court in Mustufamiya Pirsahedmiya Saiyed Vs. State of Gujarat, reported in 1999 (1) GLH 913 and unreported judgements in Special Criminal Application Nos. 7638/2001 and 770/2001 both delivered on 9.11.2001.

4. The petition is opposed to by learned APP Mr. D.P.Joshi.

5. Having regard to the rival side contentions, it is amply clear that neither the notice, nor the order externing the petitioner from the above stated districts indicate any material linking his activities in the contiguous districts, namely the districts other than

Ahmedabad Rural. The satisfaction of the externing authority therefore that he is required to be externed from contiguous districts is without basis and therefore, the order of externment would stand vitiated.

6. The petition is therefore allowed. Order dated 18.6.2001 passed by the externing authority against Shri Abdulbhai Merubhai Sama (Sandhi) and order dated 24.8.2001 passed by the appellate authority, both are hereby quashed and set aside. Rule made absolute. Direct service permitted.

(A.L.Dave,J.)

*/Mohandas